

## Recommendations

Based upon our investigation of the conduct of this Administration, we believe that Congress must investigate the exact extent of the abuses of power and who was responsible, discipline responsible officials, and enact reforms that could deter such abuses in the future. In fact, failure to act immediately could not only indicate a desire that such abuses continue but also constitute an abdication of Congress's responsibility to act as a check against the Executive Branch. Explained in greater detail below, we recommend that:

1. The House should establish a bipartisan select committee with subpoena authority to investigate the Bush Administration's abuses detailed in this Report and report to the Committee on the Judiciary on possible impeachable offenses. Also, the House and Senate intelligence committees should have thorough hearings and investigate the Administration's apparent manipulation of intelligence.
2. A resolution should be passed censuring the President and Vice President for abuses of power.
3. Ranking Member Conyers and other Members should consider referring the potential violations of federal criminal law detailed in this Report to the U.S. Department of Justice for investigation.
4. Congress should pass, and the President should sign into law, legislation to limit government secrecy, enhance oversight of the Executive Branch, request notification and justification of presidential pardons of Administration officials, ban abusive treatment of detainees, ban the use of chemical weapons, and ban military propaganda efforts.
5. The House should amend its Rules to permit Ranking Members of Committees to schedule official Committee hearings and call witnesses to investigate Executive Branch misconduct.

## Explanation of Recommendations

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The House should establish a bipartisan select committee with subpoena authority to investigate the Bush Administration's abuses detailed in this Report and report to the Committee on the Judiciary on possible impeachable offenses. Also, the House and Senate intelligence committees should have thorough hearings and investigate the Administration's apparent manipulation of intelligence. The select committee should complete its investigation within six months and, upon completion, report to the Judiciary Committee on any offenses it finds that may be subject to impeachment. Such a committee is needed because of the severity of the abuses of power and of public trust that may have occurred.

The Ervin Commission in the 1970's was instrumental in investigating the Watergate abuses of the Nixon Administration and led to the impeachment hearings in the U.S. House Judiciary Committee. In the past, the House also has created select committees to investigate serious breaches of public trust, issues of national security, or other matters of national concern.<sup>1009</sup> These have included potentially-illegal or unethical conduct by Presidents, such as the Reagan Administration's sale of weapons to Iran in the 1980's<sup>1010</sup> and U.S. military activity in Southeast Asia during the 1970's.<sup>1011</sup>

In this instance, we recommend that the select committee be comprised of members of the Committee on the Judiciary, Committee on Armed Services, Committee on Government Reform, Permanent Select Committee on Intelligence, and Committee on International Relations. Furthermore, the select committee should not consist of equal numbers of Democratic and Republican Members.

In order to ensure it is able to obtain the information necessary to investigate the Executive Branch, the select committee should have the authority via a subpoena power to obtain documents relevant to its investigation. These documents would include, but not be limited to those in the possession of the:

- White House;
- Department of Defense;
- Department of Justice;
- Department of State;
- Central Intelligence Agency;
- Defense Intelligence Agency;
- National Security Council; and
- the CIA leak grand jury

Upon completion of the select committee's investigation, it should prepare a final and comprehensive report of its findings and any recommendations it has for amendments to federal law for improved oversight of the Executive Branch. In addition, the select committee should report specifically to the Committee on the Judiciary on any impeachable offenses it may uncover.



In addition, the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence should schedule thorough hearings to examine the Administration's manipulation of intelligence, including the receipt and analysis of the forged Niger documents and the claims that Iraq had ties to al Qaeda. The Committees should subpoena senior Administration officials as well as intelligence analysts to testify. They also should review any and all Administration documents on these issues, whether obtained by subpoena or voluntary disclosure.

**2. A resolution should be passed censuring the President and Vice President for abuses of power.**

A resolution should be passed censuring the President and Vice President for abuses of power. As explained in Exhibit A of this Report, Congress has the power to censure current and former government officials who commit illegal or unethical conduct. The conduct of the President and Vice President as discussed in this Report clearly warrants this congressional remedy.

Our investigation has found that, at a minimum, both the President and Vice President have failed to respond to requests for information concerning allegations that they and others in his Administration misled Congress and the American people regarding the decision to go to war in Iraq; misstated and manipulated intelligence information regarding the justification for such war; countenanced torture and cruel, inhuman and degrading treatment in Iraq; and permitted inappropriate retaliation against critics of their Administration. Both the President and Vice President also have, at a minimum, failed to adequately account for specific misstatements they made regarding the War; and the President has failed to comply with Executive Order 12958.

**3. Ranking Member Conyers and other Members should consider referring the potential violations of federal criminal law detailed in this Report to the U.S. Department of Justice for investigation.**

Ranking Member Conyers and other Members should consider referring the potential violations of federal criminal law detailed in this Report to the U.S. Department of Justice for investigation. Section IV of this Report describes how senior Administration officials, including the President, may have violated numerous criminal laws, such as conspiring to defraud the United States and providing false statements to Congress. These officials are not immune from prosecution by virtue of their positions and should be brought to the attention of the Justice Department, which is responsible for criminal law enforcement. Further, because many of the subjects or targets of the investigations may be high-ranking Administration officials, the Attorney General may need to refer these matters to Special Counsel Patrick Fitzgerald to avoid the conflicts of interest that could exist were the Department to handle the investigation itself.



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With respect to government secrecy, the Executive Branch should be subject to stricter standards for the classification and declassification of national security information. The Bush Administration has been overzealous in classifying information to prevent disclosure of Administration policies and activities to Congress and the public. For example, the 9/11 Commission found that there is no need to classify the overall budget for intelligence programs, yet the Administration continues to do so and at a disadvantage to intelligence reform.<sup>1012</sup> Further, as discussed in this Report, it appears that the Administration has declassified or leaked information when it was politically beneficial to do so, such as the selective leaking of intelligence on Iraq. To create uniformity in and accountability for these decisions, Congress should develop strict standards for classification and declassification of national security information. In fact, in the 105th Congress, the Senate Governmental Affairs Committee reported legislation that would have codified procedures for classifying and declassifying information;<sup>1013</sup> this legislation may serve as a model for future consideration.

In addition, the Freedom of Information Act (FOIA) should be amended to require agency compliance and to discourage dilatory tactics. As explained in this Report, the Bush Administration has thwarted efforts by Democratic Members of Congress to obtain Executive Branch documents via the Act that may shed light on whether it had planned to invade Iraq even while UN inspections were on-going. The Administration has thwarted efforts to obtain information using FOIA, by either refusing to comply or providing vague or incomplete responses that fall well short of actual compliance. To prohibit such non-compliance, FOIA should be strengthened to ensure that White House documents and any materials kept secret pursuant to executive orders are subject to disclosure; at a minimum, classified material can be submitted to Congress with appropriate security measures simultaneous with redacted copies available for public disclosure. In addition, FOIA should contain an automatic fee waiver for requests submitted by Members of Congress, as such requests are done for government oversight, not commercial, purposes. Finally, the Executive Branch should be required to implement publicly-available, Internet-based tracking of FOIA requests so that requesters are more quickly able to determine the progress of their applications.



**Intelligence personnel should be eligible for protections under whistleblower laws.** Under current law, employees of the FBI, CIA, or other members of the intelligence community may not avail themselves of whistleblower protections when disclosing government misconduct. Evidence of abuses of official power and of incompetence of government agencies do not come to the attention of Congress or the public and thus cannot be remedied. Also, experienced intelligence analysts and law enforcement agents, such as Coleen Rowley and Sibel Edmonds, may lose their employment or security clearances for alerting Congress to government missteps and possible wrong-doing. For these reasons, we recommend that employees in all positions of the Executive Branch deserve whistleblower protections.

**An inspector general should be empowered to review and report on the conduct of the White House.** The specific abuses committed by White House officials, such as the leak of Valerie Plame Wilson's status as a covert CIA operative, indicate that the White House has inadequate controls over internal operations. Under the Inspector General Act of 1978 and subsequent amendments, various federal cabinet departments and agencies are subject to internal inspectors general that conduct audits and investigations, issue reviews of policy effectiveness, and report to agencies and Congress on deficiencies and the need for corrective action.<sup>1014</sup> Such inspectors general are appointed by the president or specific agency heads, yet the appointing authority has no supervisory authority over an inspector general.<sup>1015</sup> The appointing authority can remove an inspector general but must report such decisions to Congress.<sup>1016</sup> Such an office should exist also for the White House, which includes statutorily-funded units such as the Executive Office of the President, the Office of the Vice President, the Office of Management and Budget, and the National Security Council. In fact, Rep. William F. Clinger, Jr., (R-PA) introduced H.R. 3038, the "Executive Office Accountability Act of 1993," to create such an office.<sup>1017</sup>

**The President should be required to report to Congress on U.S. surveillance or searches of international organizations.** For instance, the Bush Administration wiretapped the offices of the U.N. Security Council and the IAEA to determine how the organizations and their member states were reacting to U.S. war efforts.<sup>1018</sup> Such treatment of organizations that are designed to further diplomacy has the potential to diminish the United States's standing in the world and could undermine our efforts to protect freedom. For this reason, we recommend that the President report to the Judiciary, International Relations, and Intelligence Committees of the House and the Judiciary, Foreign Relations, and Intelligence Committees of the Senate on any U.S. government searches or surveillance of diplomatic offices.

**The President should be required to submit detailed reports to Congress on the use of military force.** While the President is required to report to Congress on the use of force under the War Powers Resolution,<sup>1019</sup> there are no statutory guidelines for the content of the reports. As a result, the President may omit information that challenges the Administration's representation of the progress of the war. For that reason, the War Powers Resolution should be amended to require information such as:



- the number and types of injuries to and fatalities of U.S. soldiers as a result of hostile and friendly fire since the previous report;
- to the extent the United States is training soldiers native to the overseas theater, the number of such soldiers who are able to assume complete responsibility for combat and security roles since the previous report;
- the Administration's plan for withdrawing U.S. forces;
- the extent to which members of the Armed Forces are submitting requests for additional body armor or other supplies and the extent to which the Defense Department has provided such armor or other supplies;
- the number of U.S. soldiers in the theater that are part of the active military and the number of U.S. soldiers in the theater that are affiliated with national guard and reserves;
- the number of U.S. military personnel that are subject to stop-loss orders; and
- the maximum period of deployment for any member of the Armed Forces.

**The President should be requested to notify Congress, and provide justification for, any decision to pardon a current or former Administration official, employee, or contractor.** Article II of the Constitution provides that the President has the power to “grant reprieves and pardons for offenses against the United States, except in cases of impeachment.” This power combined with the indictment of Scooter Libby in connection with the leak of a CIA operative's identity, raises the possibility that the President may be inclined to pardon current or former Administration officials who were involved in the disclosure. As a matter of fact, the President has ignored requests by House and Senate Democrats that he promise not to pardon Mr. Libby or, should be he indicted, Mr. Rove.

The circumstance of the leak has raised the broader issue that a president, in order to conceal his own illegal or unethical conduct, could pardon current or former Administration officials who could implicate him in that misconduct. For that reason, we believe that Congress should pass legislation requesting the president to submit a report to Congress within five days of the pardon of any current or former Administration officials, employees, or contractors. Such a requirement would not limit the pardon power but would enhance congressional and public oversight of the Executive Branch.

The president's report should include information indicating:

- the name and position of the individual who received the pardon or reprieve;



- the nature of the offense involved;
- the date of the pardon or reprieve;
- the justification for the pardon or reprieve;
- the effect of the pardon or reprieve (e.g., was a term of imprisonment waived or reduced);
- whether the individual was involved in any on-going criminal or civil investigation;
- whether the President sought the recommendation of the lead federal official who investigated or is investigating the individual as to the positive or negative implications of the pardon or reprieve and the nature of that official's recommendation; and
- whether the lead federal official who investigated or is investigating the individual believes or has reason to believe that the pardon or reprieve would interfere with an on-going investigation and what impact the pardon or reprieve had on any on-going investigations into possible misconduct by the president, vice president, or other officials within the Administration.

**The United States should accede to international treaties regarding the conduct of the U.S. Armed Forces.** First, the United States should acquiesce to the International Criminal Court (ICC). The ICC is the first permanent tribunal established to investigate and prosecute crimes of an international nature. Its specific purpose is to investigate (1) the crime of genocide, (2) crimes against humanity, (3) war crimes, and (4) the crime of aggression.<sup>1020</sup> Pursuant to its promulgating statute, the ICC is not permitted to investigate an offense that is being reviewed by a State that has jurisdiction over it.<sup>1021</sup> For instance, if the United States already is investigating an allegation of a war crime committed by US soldiers, then the ICC would not have the authority to begin its own investigation into that same allegation.

Second, the United States should ratify Protocol III of the 1980 Convention on Certain Conventional Weapons (CCW), which bans the use of white phosphorous as an incendiary weapon. While the United States has agreed to abide by four protocols of the CCW, it refused to sign Protocol III. The Protocol proscribes targeting civilians with incendiary weapons and restricts the use of air-delivered incendiary weapons against military targets near concentrations of noncombatants. Protocol III covers only those weapons designed to start fires or burn; it does not regulate weapons that set fires as a side effect.

**Congress should ban the Executive Branch and government consultants from compensating members of foreign or domestic media outlets for the publication of**



government-created news articles. It has been disclosed that the Bush Administration, through the Pentagon and various consultants, has written draft articles concerning the war in Iraq and then paid for translation of the stories into Arabic and submission to Iraqi newspapers for publication. Such an effort undermines the Administration's stated interest in bringing democracy and a free press to Iraq and rest of the world.

5. The House should amend its Rules to permit Ranking Members of Committees to schedule official Committee hearings and call witnesses to investigate Executive Branch misconduct.

The House should amend its Rules to permit Ranking Members of Committees to schedule official Committee hearings and call witnesses to investigate Executive Branch misconduct. This is needed because of the unwillingness of Republican leaders to investigate the Bush Administration. Under the existing Rules of the House, only the chair of a committee may call for committee meetings and hearings.<sup>1022</sup> At the beginning of the 109th Congress, several Ranking Members of Committees, including Judiciary, attempted to amend Committee rules to allow for such hearings, but Majority Members of the Committees rejected these efforts.





<sup>1009</sup>See CHARLES W. JOHNSON, PARLIAMENTARIAN OF THE HOUSE, HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS, AND PROCEDURES OF THE HOUSE ch. 11 § 13 (2002).

<sup>1010</sup>H.R. Res. 12, 100th Cong., 1st Sess. (1984).

<sup>1011</sup>H.R. Res. 976, 91st Cong., 2d Sess. (1970).

<sup>1012</sup>NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT 416 (2004).

<sup>1013</sup>S. REP. NO. 105-258 (1998) (Senate Committee report on S. 712, the “Government Secrecy Act of 1997.”).

<sup>1014</sup>5 U.S.C. App. See *also* FREDERICK M. KAISER, CONGRESSIONAL RESEARCH SERV., STATUTORY OFFICES OF INSPECTOR GENERAL: PAST AND PRESENT (Sept. 28, 2005).

<sup>1015</sup>See KAISER, *supra*.

<sup>1016</sup>*Id.*

<sup>1017</sup>H.R. 3038, 103d Cong., 1st Sess. (1993). H.R. 3038 had forty-five Republican cosponsors and one Democratic cosponsor.

<sup>1018</sup>Suzanne Goldenberg, *U.S. Tapped El-Baradei Calls, Claim Officials*, GUARDIAN HOME, Dec. 13, 2004, at 1; Hugh Dellios, *Accusations of Espionage at the U.N. Swirl Against U.S., Britain*, CHICAGO TRIB., Feb. 13, 2004, at C10.

<sup>1019</sup>War Powers Resolution, Pub. L. No. 93-148 (1973).

<sup>1020</sup>Rome Statute of the International Criminal Court, July 17, 1998, art. 5, U.N. Doc. A/CONF.183/9, 37 I.L.M. 999, 1016, *available at* [http://www.icc-cpi.int/library/about/officialjournal/Rome\\_Statute\\_120704-EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf).

<sup>1021</sup>*Id.* art. 17.

<sup>1022</sup>House Rule XI, clause 2.

